

State Board of Equalization

OPERATIONS MEMO

For Public Release

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**SUBJECT: REVISED UNIFORM PARTNERSHIP ACT (RUPA) –
LIABILITIES ESTABLISHED AFTER PARTNER DISSOCIATED**

I. PURPOSE

This operations memorandum contains policies and procedures regarding the Board of Equalization's (BOE's) ability to hold a partner responsible for a partnership's liabilities incurred *after* the partner dissociated (separated) from the partnership. The BOE's prior policy was recently reevaluated based on guidance provided by the BOE's Legal Department. In summary, a partner can only be held liable for partnership liabilities incurred through the date the partner actually dissociated from a continuing partnership.

II. BACKGROUND

The Revised Uniform Partnership Act of 1994 (RUPA) required the BOE to modify its policies and procedures for handling partnership accounts, including registration, billings/notifications, and collections. Information regarding RUPA is provided in Compliance Policy and Procedures Manual (CPPM) sections 301.000, *Partnership Changes*, and 724.000, *Partnership Collections*. Although most of the information contained in these CPPM sections remains valid, BOE's policy with respect to holding a dissociated partner liable for post-dissociation liabilities has changed.

III. POST-DISSOCIATION LIABILITIES

When a partner dissociates from a continuing partnership, that partner is generally not liable for partnership obligations incurred *after* the date of dissociation. There are two exceptions to this general rule, both of which are contained in the Corporations Code (CC).

- CC section 16308(a)(b) states that persons that hold themselves out as partners, or who consent to others making representations that they are partners, are liable to any third parties who enter into transactions in reliance on such representations, whether or not a true partnership obligation exists.
- CC section 16703(b) makes the dissociated partner liable to any third parties who enter into transactions with the partnership within two years after the date of dissociation, but only if the third party reasonably believed that the dissociated partner was then a partner and the third party did not have notice of the partner's dissociation.

Both of the exceptions provided by CC sections 16308 and 16703 purportedly exist for the purpose of protecting creditors who enter into transactions based upon a representation that a specific person was a partner. These exceptions do not pertain to unpaid sales and use tax or property and special tax and fee liabilities incurred by a continuing partnership. As such, a partner that dissociates from a continuing partnership but who does not notify the BOE, either directly or by filing a Statement of Dissociation with the Secretary of State, is not liable under RUPA for taxes and fees incurred by the continuing partnership after the date of dissociation.

If a partner fails to notify the BOE of their dissociation from a continuing partnership, evidence provided by the partner should be examined to determine if the partner did, in fact, dissociate from the partnership and the date of the dissociation. The dissociated partner has the burden of proving the date of dissociation which may involve providing substantiating documentation such as:

- Federal and state income tax returns for the periods in question for the dissociated partner and the business. Schedule K-1 of Form 1065, U.S. *Partnership Return of Income*, should list each partner and its individual share of income from the partnership business.
- Statement of Partnership Authority, Statement of Denial, and/or Statement of Dissociation filed with the California Secretary of State.
- Registration records and tax returns from other government agencies.
- Public records, such as a city business license, fictitious name statement, liquor license, etc.
- Copy of business premises lease agreement, utilities billings, etc.
- Cancelled business checks and bank records showing authorized signers.
- Any other evidence that will assist in substantiating the true ownership of the business during the period in question.

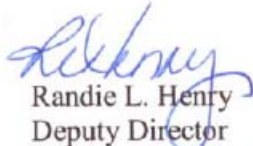
However, if a partnership is dissolved as a result of a partner's dissociation or dissolved within 90 days after a partner dissociates, the partner will continue to be liable to the partnership's creditors for all of the obligations the dissolving partnership incurs until it winds up its affairs, including a predecessor liability pursuant to RTC section 6071.1 and Sales and Use Tax Regulation 1699(f), under CC sections 16701.5 and 16807. A predecessor liability could arise in any situation where the BOE was not informed that a partnership dissolved and post-dissolution liabilities were incurred by an entity that continued operating the business under the dissolved partnership's seller's permit. Information regarding predecessor's liability is provided in CPPM section 775.000, *Predecessor's Liability for Successor's Tax*.

IV. END DATE AND LEGAL END DATE

The date of a partner's dissociation is captured in the BOE's Integrated Revenue Information System (IRIS). Specifically, the date of dissociation must be input in both the End Date and Legal End Date fields in the Client Taxpayer System of IRIS. Additional information on End Dates and Legal End Dates is provided in operations memorandum 1120, *BOE IRIS Changes for Accounts Affected by RUPA*.

V. OBSOLESCENCE

This operations memorandum will become obsolete when the information contained herein is incorporated in the appropriate manuals or is obsolete.



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